IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5784 of 2002
with
SPECIAL CIVIL APPLICATION No 6779 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.H. MAKWANA

Versus

REGISTRAR

Appearance:

1. Special Civil Application No. 5784 of 2002
MR IS SUPEHIA for the petitioner
MR JB PARDIWALA for the respondent.

2. Special Civil Application No. 6779 of 2002
MR IS SUPEHIA for the petitioner.
MR JB PARDIWALA for the respondent.

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/08/2004

COMMON ORAL JUDGEMENT

Special Civil Application No.5784 of 2002, wherein Misc. Civil Application No.1243 of 2004 is filed for restoration of the main matter is not notified on the Board. At the request of Mr.I.S. Supehia, the learned advocate appearing for the petitioners who submitted that the facts of Special Civil Application No.5784 of 2002 are similar to that of Special Civil Application No.6779 of 2002 and the issue involved is also similar and therefore, arguments will be common in both the petitions. Mr.Pardiwala, the learned advocate has no objection if the request of Mr.Supehia is granted. The papers of Special Civil Application No.5784 of 2002 are called for so as to hear the matter with Special Civil Application No.6779 of 2002. After allowing Misc. Civil Application No.1243 of 2004 in Special Civil Application No.5784 of 2002, both the petitions are taken up for final hearing today.

SPECIAL CIVIL APPLICATION No.5784 OF 2002

2. The facts in Special Civil Application No.5784 of 2002 are that the petitioner was serving as 'Clerk of the Court', he was promoted to this post by order dated 08.09.1989. Prior to that he was serving as Senior Clerk. He was promoted as Senior Clerk from the post of Junior Clerk by order dated 02.09.1987. The benefits of Higher Grade Scale were granted to him by order dated 07.08.1997 but then the same were withdrawn by order dated 07.05.2002.

SPECIAL CIVIL APPLICATION NO.6779 OF 2002

3. The facts in Special Civil Application No.6779 of 2002 are that the petitioner who was serving as 'Clerk of the Court' at Labour Court, Nadiad was granted benefits of Higher Grade Scale by order dated 07.08.1997 (Annexure 'B'). The said benefits of Higher Grade Scale were withdrawn by order dated 07.05.2002 (Annexure 'D'). This order was subsequently amended, to a limited extent by another order dated 21.06.2002 (Annexure 'E'), whereby recovery of the amount paid to the petitioner was waived by the authorities. Thus, order dated 21.06.2002 is in favour of the petitioner.

Order dated 07.05.2002 as amended by order dated 21.06.2002 is challenged.

4. The facts which are not in dispute are that, the petitioner who at the relevant time was working as 'Clerk

of the Court' was promoted to that post by order dated 06.03.1990. Prior to that he was working as Junior Clerk and by order dated 02.09.1987 he was promoted to the post of Senior Clerk. The posts of Senior Clerk and 'Clerk of the Court' belong to two different cadres having different recruitment rules and having different seniority lists. After the petitioner was granted, the benefit of Higher Grade Scale, the matter came to the notice of the President of the Industrial Tribunal, when Departmental Promotion Committee, consisting of the President, Industrial Court, Ahmedabad, Senior Member of the Industrial Court, Ahmedabad and the learned Chief Judge of the Labour Court, Ahmedabad reviewed the orders granting the benefits of higher grade scale in its meeting dated 09.10.2001. In view of the fact that the post of Senior Clerk and the post of 'Clerk of the Court' are of two different cadres, it was realised that the order granting the benefit to the petitioner (dated 07.08.1997) was erroneous, hence to that extent it was cancelled.

5. Mr.Supehia, the learned advocate appearing for the petitioner strenuously submitted that Government Resolution No.PGR/ 1194/ 44/ M dated 16.08.1994 provided for grant of benefit of Higher Grade Scale. The benefit was given to the petitioner under this Govt. Resolution. It is only because the said Govt. Resolution is not properly interpreted/ construed by the committee, the order under challenge is passed. He submitted that an error is committed in applying clause 3.11 to the facts of the case of the petitioner, whereas clause 3.2 is applicable. The learned advocate vehemently submitted that it is a well settled legal position that in the matters of grant of benefits of Higher Grade Scale, what is required to be taken into consideration is "Length of service in the same pay scale" and nothing else. In this regard he relied upon the following decisions:-

Decisions of this Court:

(i) Letters Patent Appeal No.779 of 2000 in Special Civil Application No.1367 of 1999, in the matter of State of Gujarat Vs. Ajitsinh Chaturji Rathod.

(ii) Letters Patent Appeal No.761 of 2003in Special Civil Application No.10469 of 1999, State of Gujarat Vs. Mulchandbhai Lavjibhai Patel and others.

(iii) Letters Patent Appeal No.229 of 2003 in Special

Civil Application No.1179 of 2002 and allied matters, in the case of Paragbhai and others Vs. State.

Decisions of the Honourable the Apex Court:

(i) Scientific Advisor to Raksha Mantri and another Vs. V.M. Joseph, reported in (1998) 5 SCC 305, and

(ii) Dwijen Chandra Sarkar and another Vs. Union of India and another, reported in AIR 1999 SC 598.

The learned advocate without pointing out the similarity of facts of the cases placed reliance on these decisions by reading stray sentences from these judgements in support of his contention that, 'the total service span in the same scale is the factor which is required to be taken into consideration and no other factor like cadre, or change of cadre or any particular provision in the aforesaid Government Resolution dated 16.08.1994 is to be taken into consideration'. The learned advocate did not produce the judgement of the learned Single Judge in any of the case, of which Letters Patent Appeal decisions he relied. It was inquired by the Court as to whether he would like to point out the facts of the case, decisions in which he is relying, so as to establish that the facts being similar, the decision is applicable to the facts of the case on hand, he replied that he does not have copies of decisions of the learned Single Judge. The learned advocate did not pray for time to obtain copies of judgements of the learned Single Judge. The learned advocate submitted that in view of the fact that the aforesaid two decisions of the Honourable the Apex Court are referred to and relied upon by a Division Bench of this Court in its decision in Letters Patent Appeal No.761 of 2001 (supra), his contention is required to be accepted by this Court.

6. Taking into consideration the facts of the case on hand and taking into consideration the fact that the learned advocate has not established any similarity between the facts of the present case and the facts of the cases in which the aforesaid decisions were rendered, the same are of no help to the petitioner. In the considered opinion of this Court these decisions do not support the contention raised by the learned advocate.

7. The Government issued Resolution dated 16.08.1994 with a definite object in mind. It was issued for the

purpose of avoiding frustration among the Government employees which occurs on account of stagnation. The Government laid down a 'detailed policy' in the aforesaid Resolution. If the contention of the learned advocate, for the petitioner is accepted, the object will stand frustrated and it will amount to re-writing of the Government Resolution which is not warranted in the interest of justice. If the Court is convinced of the fact that, the authorities are according, discriminatory treatment, to an individual and not applying the policy of the Government uniformly to its employees, it is duty bound to 'check' the same.

8. Clause 3.2 of the aforesaid Government Resolution dated 16.08.1994 provides that a Government employee, who in the relevant cadre and pay scale, (i) completes nine years of service and (ii) is not able to earn two promotions in his service career, will be entitled to the benefit of Higher Grade Scale.

The clause then proceeds to set out that, in the matters of isolated cadres wherein the nomenclature of the cadre changes, the services rendered by an employee will be taken into consideration, for grant of the benefit of Higher Grade Scale. It is further provided in the clause that when there is a change of cadre in the public interest and the pay scales of both the cadres is the same, in that case also the services rendered are required to be clubbed together for determining the eligibility of an employee for grant of benefit of Higher Grade Scale. It is important to note that, it is provided, in the said clause that, the services rendered in two different cadres will be taken into consideration, subject to fulfilment of other conditions provided for. It is also provided that, the concerned office will have to issue a certificate to the effect that the cadre of the concerned employee was changed in public interest. So far as clause 3.11 is concerned it is provided therein that in the same Department, in the same cadre, even if the nomenclature of the post is different, then the services rendered, are required to be taken into consideration. But if the cadre is different and the pay scale is the same, the services cannot be clubbed together.

9. In this view of the matter clauses 3.2 and 3.11 cannot be read as suggested by the learned advocate for the petitioner. All the clauses are required to be read harmoniously. No clause is to be ignored or overlooked, only to hold that the petitioner is entitled to the benefit of Higher Grade Scale. Clause 3.2 lays down

eligibility. Clause 3.11 provides required clarifications. Hence clause 3.2 cannot be read ignoring clause 3.11.

10. In the petition itself it is averred by the petitioner that,

> "8. .. .. Both the posts are having the same pay scale of Rs.1200-2040. By the order dated 2.9.87 the petitioner was promoted from the post of Junior Clerk to the post of Senior Clerk in the pay scale of Rs.1200-- 30--1560-EB-40-2040. Hereto annexed and marked Annexure 'F' is a copy of the order dated 2.9.87. Thereafter by the order dt.6.3.90 the petitioner was promoted from the post of Senior Clerk to the post of Clerk of the Court "in the same pay scale. .. .."
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> xxx xxx
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> "10. It is true that the seniority of Senior Clerk and Clerk of the Court is maintained separately and technically it can be said to be two cadres. As stated in para (1) of the Show Cause Notice dt.21.11.2001 "only" clerks of the Court are eligible for promotion to the post of Superintendent. .. .." (emphasis supplied)

11. The learned advocate for the respondent, Mr.Pardiwala made available a copy of the Recruitment Rules for the post of Clerk of the Court and also for the post of Senior Clerk. For recruitment to the post of the Clerk of the Court it is provided that,

> "Appointment shall be made either by promotion from among the members of the staff of the Labour Courts or by nomination.
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> 2. The proportion of appointment by promotion and nomination shall be in the ratio of 50:50."

The Recruitment Rules, for the post of 'Senior Clerk' titles as "Senior Clerk, Class III (in the Labour court) Recruitment Rules, 1998", are framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. Rule 2 provides that, "appointment to the post of Senior Clerk in the Subordinate Service of the Labour Court, Class III, shall be made by promotion of a person of proved merit and

efficiency from amongst the persons who, ..."

12. Thus, the Recruitment Rules for the two cadres are different. It is not disputed that separate seniority lists are maintained for bot these cadres. It is mentioned in the Show Cause Notice dated 27.11.2001 that for the post of Superintendent 'Clerk of the Court' is the only feeder cadre, that the Senior Clerk/ Sub Accountant have a common seniority list while the 'Clerk of the Court' has a separate seniority list, that the post of 'Clerk of the Court' is a promotional post for Senior Clerk/ Sub Accountant, that whenever any Clerk or Sub Accountant is given additional charge of the post of 'Clerk of Court' he is paid 10% of the salary, as 'charge' allowance. In the Show Cause Notice it is also referred that the Finance Department by its Resolution dated 16.08.1994 bearing No.PGR/1194/ 44-M, para 3(1) has not considered the services rendered as Senior Clerk and as 'Clerk of the Court' at par, which can be clubbed together for deciding the eligibility of grant of benefit of Higher Grade Scale.

13. The learned advocate Mr.Pardiwala appearing for the respondent relied upon a decision of the Honourable the Apex Court in the case of Dr.Chakradhar Paswan Vs. State of Bihar, reported in AIR 1998 SC 959. He submitted that the Honourable the Apex Court has considered the term 'cadre' in para 7A. The relevant part of para 7 reads as under:

> "In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental R.9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. (emphasis supplied)

14. The Honourable the Apex Court has further observed in the same para which elaborates and makes the things clear. It being relevant to the facts of this case is quoted hereunder:

> " .. .. The post of the Director which is the highest post in the Directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to

the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service .. .."

In the present case, 'Senior Clerk' and the 'Clerk of the Court' are in separate cadres. It is needless to say that, the incumbents do not perform the same duties, do not carry the same responsibilities. Not only that when the incumbent holding the post of 'Senior Clerk' is given additional charge of the post of 'Clerk of the Court', he draws 10% of the salary as charge allowance. Besides, it is also important to note that for the post of 'Superintendent', 'Clerk of the Court' is the only feeder cadre under the Recruitment Rules.

15. Mr.Pardiwala, the learned advocate for the respondent next relied upon the decision of the Honourable the Apex Court in the matter of C.G. Govindan Vs. State of Gujarat, reported in 1999 (1) GLR 512. The decision of the Honourable the Apex Court is in three Civil Appeals being 400 of 1997, 401 of 1997 and 402 of 1997. [The decision was by a Bench of two Honourable Judges. Civil Appeal No.400 of 1997 was decided wherein both the Hon'ble Judges concurred. So far as Civil Appeals No.401 of 1997 and 402 of 1997 the Honourable Judges had difference of opinion and therefore, those appeals were directed to be placed before the Honourable the Chief Justice of India for constituting a larger Bench]. The decision in Civil Appeal No.400 of 1997 is in para 28 of the judgement, which reads as under:

"Civil Appeal No.400 of 1997 is by one C.G. Govindan from the same judgement and order of the Division Bench of the Gujarat High Court dismissing his Letters Patent Appeal No.441 of 1995 before it. The appellant Govindan is also a Private Secretary to a Judge of the Gujarat High Court. he had asked for his placement in the pay scale of Rs.3000 -- 4500 from 1st January 1986 although he was at that time working as Private Secretary in the City Civil Court at Ahmedabad. He came to the High Court as a Private Secretary only in 1990. The High Court has rightly

> negatived his contention that he should get the benefit of the higher pay scale for the period prior to his joining the cadre of Private Secretaries in the High Court. The appeal, therefore, of the appellant Govindan for grant to him of the pay scale of Rs.3000-4500 from 1st January 1986 must be dismissed. He will be eligible for the pay scale of Rs.3000-4500 only after he fulfils the requisite criteria for being upgraded to the higher pay scale as a Private Secretary to a High Court Judge."

16. From the aforesaid judgement, it is clear that, the services rendered by the appellant as Private Secretary to a Judge of the City Civil Court were not found at par with the Private Secretary to a Judge of the High Court of Gujarat and therefore, the appellant was not held entitled for the benefits of Higher Grade Scale.

17. In light of the aforesaid discussion it is clear that Government Resolution dated 16.08.1994 holds the field. It is a Government Resolution by which benefits are sought to be conferred on the employees with an object to avoid frustration on account of stagnation, but that does not mean that all Government employees even in violation of the conditions provided therein shall be granted benefits of Higher Grade Scale. The Government Resolution has laid down the policy in detail. It has laid down various conditions, which are 'conditions precedent'. Only if an employee fulfills the same he can be granted benefit of Higher Grade Scale. To contend that, only a particular clause of the Government Resolution is to be read, ignoring the other one, is not only erroneous, but also amounts to doing injustice to the spirit of the Resolution.

18. In view of the aforesaid discussion these petitions fail and the same are dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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